The Corporation

The Corporation:

Its History and Future

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ABOUT THIS BOOK

The world, it seems, has a love-hate relationship with corporations. Consumers line up for hours—days, even—for the latest iPhone, but recoil at reports that employees of an Apple contractor in China are leaping off factory roofs in despair over low salaries and harsh working conditions. We love our cars for the freedom they provide, their elegant lines and technological sophistication but worry about the automobile's contribution to smog and global warming, especially when we learn that Volkswagen has been rigging its emission tests. How cool is that we can search online for any piece of information on any topic and Google will find it almost instantly; but how disconcerting is it that Google is also collecting millions of gigabytes of data on the web habits of each of its billion-plus users. Love my new Nikes or the cute little Disney sweatshirt for my niece, but did those items come from some brutal sweatshop in Indonesia or a firetrap factory in Haiti?

Governments face similar contradictions regarding the corporations in their midst. On the one hand, corporations are recognized as engines of the economy, providers of employment and vital contributors to innovation. Corporations pay taxes on income and on transactions that are important sources of revenue for governments at all levels of operation. Nations the world over actively encourage corporate growth, partner with private firms, and busily engage corporate services. On occasion, corporations and governments are almost indistinguishable: the Saudi Aramco oil company essentially funds the nation of Saudi Arabia, for example.

At the same time, governments are just as energetically regulating company activities, fining corporate violations, breaking up—or threatening to break up—corporations that have become too large, too powerful, too influential for anyone's good. The Volkswagen tale is as good an example as any. The company deliberately rigged the software in their diesel engine cars to engage pollution controls during emission testing situations, but to turn off those same controls during ordinary driving conditions. As a result of these so-called "defeat devices", emissions testing results were so positive that Volkswagen received several "Clean Diesel" awards for outstanding technological achievement. But in reality, Volkswagen vehicles were emitting about 40 times more pollution on the road than they did in the testing laboratories. When researchers first identified the discrepancy, the results seemed so anomalous that they were convinced their testing equipment was faulty.

News of the subterfuge broke in 2015 and was met with widespread outrage. Investigations were begun in multiple countries. Lawsuits were filed. The corporation's stock price plunged as the extent of the deceit grew clear. Volkswagen’s CEO was given the axe. In 2018, Germany took the step—rare for any country—to actually arrest Rupert Stadler, the CEO of Audi (a Volkswagen subsidiary) for his role in what came to be known as Dieselgate. Volkswagen was fined billions of dollars, committed billions more to retrofit the affected vehicles and compensate owners, and will pay out more billions as lawsuits are settled.

So how is the company faring in the face of all this adverse activity? Quite nicely, thank you. They managed to become the world's largest automotive manufacturer in 2016, overtaking Toyota for the top spot, and have held that position since. The company is profitable and has been every year but one since the scandal broke. The value of a share of Volkswagen stock, though not yet back to pre-scandal prices, has been climbing fairly steadily and is rated (ca. 2020) a Strong Buy by most analysts.

Governments intent on seeing Volkswagen punished for its misdeeds did not want to see the company crippled. In the U.S., the carmaker was fined $2.8 billion even though fines almost ten times that amount were permissible under the law. In Germany, where Volkswagen is headquartered, and in all the countries where the firm operates, legal actions seemed a kind of "tough love" designed to send a message: "We want to keep you around for a long, long time, so don't do this again!"

Such bureaucratic forbearance was not always the case and for several hundred years, the love-hate dialectic with corporations played out quite differently. Governments allowed corporations to exist only sparingly, with restrictions on their scope of operations and their overall lifespan. The small number of corporations permitted to operate were granted a temporary charter, a way of saying, in effect: "Let's give this venture ten or twenty years. We'll see how well it performs and what advantages it provides to society at large. If we're suitably impressed, we'll consider extending your charter. If not, you will cease to exist."

It doesn't work that way anymore. Corporations have become perpetual. Chartering a new corporation—once a rarity—is now as simple and as commonplace as opening a new bank account. Corporations are assumed to be a societal 'good' not for any specific outcome of corporate activities, but simply for existing and by existing, being an engine for economic growth.

At least, that's the “official” view held by governments, economists, think thanks and policy-makers. The public at large, though, is not so sure. Corporations featured in popular entertainment are almost always the bad guys: heartless, soulless megamonsters exploiting the masses, raping the environment, corrupting governments, invading privacies, unleashing diabolical technologies and generally bent on total domination. It's fiction, of course, but it's not an unfamiliar sentiment. Indeed, it’s hard to bring to mind a modern film with a positive angle on big business. Villainous storylines notwithstanding, one truism about the depictions of corporations in popular fiction is that they wield enormous power in the modern world. It’s a power that stems from several factors.

Money, of course, is central to corporate power. Money and power have always walked hand in hand. Such a large percentage of the world's wealth flows through corporate coffers that it's small wonder that individual companies can be as influential as individual nations, a theme we explore in several of the chapters ahead.

Money is not the sole route to power, however. As the saying goes, "Information is power." Corporations collect and manage huge swaths of information. It's not unusual for a company to massage data on hundreds of millions or even billions of people. Even when kept private, the information is used in increasingly intrusive ways. Keeping the information private, though, is turning out to be a challenge. Insecure corporate IT systems routinely result in harmful leaks of private information—*your* information—making public the passwords, emails, phone numbers, Social Security numbers, and online habits of much of the population of the planet. Another book of ours, *Missed Information*, looks at this aspect of the corporate world in detail, but we touch upon it here as well.

A third route to power comes from the world of ideas. Jesus of Nazareth, Martin Luther King, Mahatma Ghandi and Rosa Parks are powerful historical figures not for the wealth they accumulated or the data they managed, but for the power of their ideas, the inspiration of their actions, and the ability of their messages to resonate with so many people. Creative ideas of a different sort, from the likes of James Watt, Confucius, Albert Einstein, Susan B. Anthony and Michael Jackson, exercise a powerful influence as well.

Corporations engage in creative ideas that can be broadly and deeply influential. Certain products and services capture the public imagination, hence the long lines for iPhones or the popularity of previously unimagined peer-to-peer services like Uber and Airbnb. Product creativity exists behind the scenes as well, such as the corporate contributions to industry standards that underlie all our cell phones, USB connections and credit cards. Corporate creativity is hugely influential in our cultural milieu, influencing the foods we eat, the clothes we wear, the entertainment we watch, the music we hum to ourselves, and the ways in which we interact.

Corporate ideas—corporate ideology, if you will—also extends deeply into the political arena. Corporate executives sit at the table with presidents and prime ministers, heads of government agencies, elected representatives, newspaper editors, official task forces, non-profit organizations and anyone else in a position to influence public policies and make them more favorable to the world of business. They not only comment on drafts of laws, regulations, directives and treaties; they sometimes write them, a process facilitated by corporate contributions to select politicians and advocacy groups. None of this should come as a surprise.

Corporations have been in positions of great power for as long as the corporate model has existed. In their heyday, enterprises like the British East India Company and the Hudson Bay Company ran entire nations...or close to it. America's very first corporation, though a modest affair, was founded by two of the young country’s preeminent power brokers, George Washington and James Madison. The reach of even a single large corporation, into millions of businesses and billions of people, is astounding.

Not everyone is comfortable with corporations amassing so much wealth and influence. We've mentioned popular movies already, but even serious works of non-fiction, several of them referenced in this book, expound on the dangers corporations pose to the democratic process. Thinkers as varied as Adam Smith, Thomas Jefferson and Bernie Sanders have warned of the dangers of corporate excess. The Progressive Era in American politics had a strong anti-corporate bent, one that resurfaces repeatedly in movements like Occupy Wall Street in the U.S. and some of the Green Party’s agenda in Europe.

When we mentioned to a colleague that we were working on a book about corporations, their past and future, he commented grimly: "The future? Corporations win!" Perhaps they will. And "winning" could mean the sort of heartless, dystopian future that movie-makers (and our colleague, perhaps) envision. But it doesn't have to mean that. Corporations do unquestionable damage in the world, but they also provide so much that is needed or desirable. They produce goods, they produce bads. As authors, it strikes us as important to lay out our own orientation. Ours is not an anti-corporation work. We admire some of what the corporate world has accomplished, appreciate the give and take of the marketplace that allows some products and some firms to thrive and forces others to adapt or disappear, and are thankful for a growing economy that we are lucky enough to find ourselves in the midst of.

But we are mindful of the enormous wealth and influence wielded by corporations and with it, the enormous power to destroy, to corrupt, to rewrite the rules in their favor. We look to the past to understand why corporations came into being and how they emerged into their modern form. We explore the uneasy balance of corporations, governments, media and the many interests and concerns of the public. It’s the general public, after all, that brings corporations into existence: the end consumer buying corporate products, the labor force powering corporate operations, and the communities, local and global, that interact with companies in so many different ways. We look to the future and wonder whether corporations will still exist a hundred years from now.

We trust you will find this of interest.

David Sarokin
Jay Schulkin

INTRODUCTION

We feel obliged to start with a mention of Antarctica as it's the only continent that does not appear anywhere else in this book about corporations. That may not surprise you. Outside of lots of ice, there’s very little to attract a business to Antarctica: no roads, no cities, no subways, no stores, no Starbucks...no people! And a subtler absence—there are no corporations in Antarctica.

There are companies with a presence on the icy continent, firms that send employees or equipment to the handful of research stations or that provide transportation and communication services. But no corporations make Antarctica their home. Nor could they. This isn't a matter of the very limited market or the lack of infrastructure. There are no corporations because Antarctica has no government. It is instead governed—if that's the right term—by the consensus of individual countries that are party to various international treaties. The absence of a government, by necessity, means the absence of incorporated entities.

Corporations are creatures of governments, brought into being when governments decide their existence has merit, and, for much of history, dissolved when their benefits are no longer compelling. . It is kings and queens and parliaments and legislatures that create the legal framework for a corporation and these authorities have more or less unrestricted power to extend—or end—a corporation’s existence. At least, that was the case for several centuries from the 1500’s onward. The 20th and 21st centuries have seen a shift in the creation of corporations and the factors that can lead to a company’s demise. The authority of modern governments to revoke a corporate charter is an open question.

An exploration of why corporations exist and the ways in which they operate certainly involves understanding what the incorporators hope to gain beyond that provided by a simple partnership or an informal collection of individuals. But understanding corporations also entails understanding governments. What do the powers-that-be—the kings and queens and parliaments and legislatures—hope to achieve by allowing, even

Figure Intro-1: A research station in Antarctica

encouraging, corporations to form in their midst?

Antarctica notwithstanding, we touch upon most of the world in various places in this book. England features prominently, as it can be thought to have brought the modern corporation into being. But our European coverage also includes Spain, France, Germany, Holland, Italy and elsewhere. In Asia, we touch on India, Japan, China and Korea. Other parts of the world—Ethiopia, South Africa, Canada, Mexico, Brazil, Australia—get attention as well, however briefly. We look at the meaning of *corporations* very broadly, spending a bit of text to examine corporations of all types, whether focused on business or the many other types of incorporated entities: towns, churches, non-profit organizations, schools, and so on. However, this is largely a book about the emergence of the almost-modern corporation in England and the explosive growth of business corporations in the United States.

The story of corporations is very much an American story, at least in the 19th and 20th centuries. The roots of the corporate form can be traced back to ancient Rome—or further—and corporations emerged as global powers in 17th century Europe. But the business corporation as it is familiar to us today is largely an American invention, one that emerged directly from another American invention, our peculiar form of representative government.

The division of government authority in the United States between federal and state governments had a profound influence on corporate activity in early America, and the division between branches of government made for a continual shaping and reshaping of corporate rights and responsibilities.

The impact of corporate growth in the US in the 19th century can be seen in a few numbers: in 1820, the GDP of Britain was three times the size of the GDP of the United States. By 1870, the UK economy had practically tripled in size while the US economy increased eight-fold, and the two were essentially equal. By 1913, the United States economy was more than double the size of Britain. The engine of this rapid growth in the U.S. was the emergence of the modern corporation. The US and the UK each had about 1,000 business corporations in 1800. By 1860, this number had grown to about 7,000 in Britain and 26,000 in the US. In the early 1900s, 60% of the world's business corporations made their home in America. US dominance remained solid throughout the 1900's, but globalization of the economy is rapidly changing the face of the corporate world, a topic we'll explore later in this book.

So why did corporations arise? Why did the United States play such an outsized role? And why are corporations so dominant today?

The reasons corporations came into being, the factors contributing to their dramatic growth and the societal response to both encourage and control corporations are the focus of this book. We begin in Chapter 1 by exploring some of the challenges of convening a group of people—any group, at any time in history—and looking at the role that corporations can play in addressing some of those problems, and then takes a more detailed look at the qualities and characteristics of corporations. The emergence of business corporations in quasi-modern form gets a detailed look in Chapter 2.

The corporate model in the United States occupies a good deal of the text in the middle of our book. Chapter 3 looks at incorporation in Europe and in early America, recognizing the similarities but focusing on the distinct situation in the colonies that called forth a different model of doing business. We visit with George Washington, James Madison and early entrepreneurs as they establish America's very first corporation. Corporations grew rapidly in the U.S., as did economic and societal problems associated with monopolies, Robber Barons, and what many saw as the soulless and increasingly dangerous dominance of big business. We look at the emergence of corporate regulation in Chapter 4 and consider, in Chapter 5, what it meant to operate a sizable and nearly global monopoly in the late 19th and early 20th century as compared with one of today's behemoths—Amazon.

The explosive growth of corporations coincided with an equally explosive growth in invention as tinkerers the world over learned to harness energy, create clever machinery and develop new processes of manufacturing. Once again, it was the peculiar institutions in the United States that led to a reinventing of the patent system itself. We look at the intersection of corporations and patents in Chapter 6.

As corporations became subject to increasingly stringent regulatory environments, they did not react with passive acceptance. Throughout history, businesses have pushed for maximum independence and for new ways to exercise power. In the modern world, that often meant turning to courts and legislatures and, most recently, international treaties as a means of securing additional rights, a topic we explore in Chapter 7.

We look too, to the future. What will the corporation of the next century look like? Will corporations even still exist, or will the purposes they have they served in the economies of the past few centuries be supplanted by new models of business, new social arrangements, or even by new technologies that render managerial decision-making obsolete? We examine the possibilities in Chapter 8.

CHAPTER 1

WHAT IS A CORPORATION?

Imagine getting together with a group of people to share some common interests. You can meet with your friends, perhaps for a weekly card game, or with neighbors to discuss local politics, or your high school classmates to reminisce the glory days. Your group might be an assembly of business acquaintances, teammates, factory workers, farmers, veterans, soldiers, hobbyists or fellow believers in a god, a philosophy, a public policy, a political cause. Any sort of group, any type of interests.

Since this is a purely imaginary exercise, there's no need for restraint. You can be a group of 21st century parents organizing a youth soccer league in the United States, biblical-era Egyptians building a monument to Osiris, 14th century French weavers convening to set prices for their textiles, 8th century scholars in Mali planning a library, 16th century Aztec warriors planning to attack the invading Spaniards—or any other group in any time and place of your choosing.

Over time, the group grows as more people are drawn to your cause. Infrequent get-togethers become more formal and more regular meetings. The weekly card game begins to look more like a casino; the workers collective takes on the attributes of a union; your policy group, a political party. Planning a library or monument moves forward to the point of building a library or monument. Resisting the invaders means mustering an army of your own.

People have a wondrous capacity for organizing in order to achieve ends that no one person could undertake on their own. The earliest human history was marked by natural collectives of families or clans, but these were soon augmented by groups that convened for reasons other than simple genetic proximity. The challenge of supporting ever-larger and more complex groupings of individuals is nothing less than the story of human civilization.

Figure 1-1: An early meeting place

As its popularity grows, maintaining your group becomes more and more demanding of people's time and available resources. What had started as a casual, intermittent involvement now demands the full-time attention of numerous people and a level of commitment that continues to expand.

Meetings, at first sparsely attended, are now over-crowded. Space is at a premium. Logistics become more and more complex; even the task of feeding and housing everyone requires a sizable expense and effort. Eventually the group becomes large enough that meetings grow past the point of being merely unwieldy. They become enormously difficult, then almost impossible as no one person has the capacity to accommodate everyone.

Wisely, your collective decides to obtain a space of its own. Your group could rent out available quarters, purchase an existing building or even build a headquarters from the ground up. First and foremost, your group needs money and it turns to its members to secure financing. If the group is religious in nature, the financing mechanism might be called tithing. For an educational group building a school, tuition; for a civic group forming a town, taxes; for a guild or labor union, dues; for a charitable group, donations; for a sporting club, membership fees; for a business, ownership, shares; for construction of a sewer system, municipal bonds. Whatever term is used, the acknowledged leader of the group collects the money until the group has enough to rent, purchase or construct a meeting space.

Quite suddenly, the leader of your group dies. The members are saddened, of course, but life goes on. The group appoints a new leader, meetings resume, and planning for the new headquarters moves ahead. But along comes the spouse or child of the deceased leader and says "That money belonged to my kin. Since I'm the rightful heir, the money is now mine."

"Nonsense," says the new group leader. "That money is for our headquarters. It belongs to us. Our deceased leader was just the caretaker for other people's funds"

But the original leader's relation is not convinced. The money isn't immediately accessible to the group. Maybe it's in the old leader's house, and his spouse refuses to let the group members in. Or perhaps it's in the bank, and the banker is hesitant to make it available until disputes have been settled. The individual members in your group begin to worry about the status of their project. "I want my money back. I contributed it for a headquarters, not to pass along to an heir who isn't even part of our undertaking."

The dispute needs to be settled in some fashion that depends on the mores and structure of the society in which the group exists. The many ways in which communities resolve their differences are also a central part of the story of human history. A group that is part of a warrior culture might settle its monetary dispute through combat. A group in a feudal society would take the dispute to the lord of the manor and seek his decision on the matter. A tribal group might seek guidance from its chieftain or a council of elders.

A group in a nation committed to the rule of law would take the matter to court.

In our imaginary situation, if the group goes to court it may well find itself disappointed in the outcome:

> Group: *We, the Official Organization of Movers and Shakers, hereafter known as OOMS, demand that the OOMS funds being held by the kin of our deceased leader, be returned to us forthwith.*

> Magistrate: *The laws of our nation apply to people. The heir has legal standing in the eyes of the law. The individual members of your group each have their own standing as well and they can each petition the court to try and get their money back. But OOMS…your group! It's not a 'thing' the law recognizes. It has no identity to speak of.*
>
> Group: *But the money belongs to OOMS. It's ours!*
>
> Magistrate: *A simple sense of fairness tells me the money should stay within your organization. But the law tells me otherwise. Without any standing, this court cannot rule in favor of your group, as it doesn't really exist…at least as far as the law is concerned.*

It's a conceptual oddity. The group is recognized in one way or another in the minds of its members (and others) as something distinct from the individuals that comprise the group. But no such recognition arises in the courts until the laws of the land explicitly embrace the concept of a group as having a legally-recognized identity of its own.

The organizational concept that OOMS is looking for is the *corporation*. Tribes, clans, and feudal societies don't have much need for corporations. Societies based on the rule of law do. The existence of a formal legal entity for a group of people that is distinct from the individuals comprising the group allows the group a legal presence it could not otherwise have. The group—the *corpus*—can retain its identity and its legal rights as a corporation, even as the members of the group come and go. "We will make your organization an artificial person," the law in effect is saying, "so that you can have standing within our legal system, just as a natural, biological person does. You can enter into contracts. You can be recognized as a legitimate party in lawsuits. You can exercise legal rights."

"You can keep your money."

So right off the bat, we have one obvious advantage of incorporating. An incorporated group, a *corporation*, can be recognized in a court of law as an entity with a legal standing more or less equivalent to a person.

The concept of corporate personhood does not usually sit well with the public at large. Corporations are so obviously *not* people that the idea of legally granting them equal standing with individuals seems patently absurd. But not recognizing a collection of individuals as an entity distinct from the members themselves also leads to absurdities, such as OOMS not being able to retain its funds. Once that obstacle is overcome—once corporations are granted legal status—then the accumulated results of thousands of individual cases involving corporations serve to refine and define just what a corporation is and what its rights and responsibilities are under the law.

Sometimes, the cumulative effect of case law restricts corporate rights. But more frequently, it seems, court decisions and legislative actions add to the legal status that corporations enjoy. As corporations have gained additional rights that previously had belonged only to individuals there has been considerable push-back on the concept of corporate personhood, spurring a modern re-examination of the corporate rights and corporate responsibilities that have accumulated over centuries.

The notion of a corporation as a formally-recognized fictitious person is frequently traced back to the 13th century Catholic Church (though its roots can certainly be extended even further). Pope Innocent IV (1243-1254) issued a rule allowing an ecclesiastical corporation (a *collegium*) to deliver an organizational oath through a single individual because, as the Pope declared, "the College is in corporate matters figured as a person." The organization could be sworn in, in other words, much as an individual could. But corporate personhood had its limits. Only individual people, not corporations, could be excommunicated since the latter is a mere "legal term" and is not capable of sin. Even at this early date, the 'first' corporation gained a lopsided type of personhood, obtaining a convenience available to individuals without taking on the moral onus of possible sin. That imbalance notwithstanding, corporate personhood was intended as a concept of convenience and nothing more.

Thomas Hobbes, writing in Leviathan in 1651, referred to corporations as "…lesser commonwealths in the bowels of a greater, like worms in the entrails of a natural man." Hobbes' point was that the state—the only grouping of people that really mattered to Hobbes—was put at risk by hosting a multitude of smaller groupings—corporations—within its framework. Hobbes viewed the proliferation of corporate entities, of the business variety as well as incorporated towns, churches and other entities, as so many smaller parasites feeding off the host of the nation-state. His objections notwithstanding, Hobbes was a shareholder in the Virginia Company, one of the earliest European corporations.

In the modern world, it no longer seems advisable to think of corporations as “lesser” anythings. The largest business corporations—the multinational giants like Shell Oil, Walmart, Toyota, Apple—operate on a scale of finance and influence that make them secondary to few other entities on the planet. Since business corporations first came into being there have been giants among them—think of the British East India Company, for example. But formal incorporations remained a relatively rare form of doing business until late in the 19^{th} century. With the dawning of the 20^{th} century, corporations became more commonplace—so much so that we easily use the term *corporation* to refer to a business corporation, without feeling a need to distinguish it from other types. As corporations grew in size and number, so did their power.

The First Corporations?

The often-reliable Wikipedia begins its entry for Standard Oil with this paragraph:

> Standard Oil Co. Inc. was an American oil producing, transporting, refining, and marketing company. Established in 1870 by John D. Rockefeller as a corporation in Ohio, it was the largest oil refiner in the world of its time. Its controversial history as one of the world's first and largest multinational corporations ended in 1911, when the United States Supreme Court ruled that Standard Oil was an illegal monopoly.

The paragraph captures a lot:

- the status of Standard Oil as among the “largest” and “first”;
- the importance of oil and transportation as key industrial sectors;
- the prominence of the infamous “Robber Barons”, John D. Rockefeller among them;
- the tendency of corporations towards monopoly control;
- the emergence of the “multinational” corporation;
- the controversy surrounding almost all large corporations;
- the role of the courts in reigning them in.

Unstated, but perhaps implied in the paragraph, is the leading role of the United States in the emergence of the corporate form of business and in creating conditions in the late 19^{th} and early 20^{th} centuries for corporations to thrive.

Corporations existed before Standard Oil, of course. But not terribly many. A study of corporations in 18th century America tallied a total of 317 business corporations: 62 financial firms, 207 highway and canal companies, 36 utilities, 8 manufacturers and another 5 listed as miscellaneous. The corporate model of doing business in the United States didn't really begin to pick up steam until after the Civil War and even then, involved fairly small-scale enterprises for the most part.

Standard Oil was something new. The world's first multinational corporation, as Wikipedia puts it, or the first modern corporate behemoth, to put it another way. Standard Oil was the exemplar of the corporate "trust", a complex web of business entities that often disguised the role of the oil giant as the one pulling the strings. The trust allowed Standard Oil to exercise enormous influence in the booming business of petroleum through its direct operations as well as through controlling interests in, or outright ownership of, other companies.

Standard Oil’s dominance of the industry was great enough that the company produced more petroleum than could effectively be marketed in the United States, compelling Rockefeller to seek markets overseas. In the 1890s, Standard Oil began selling product in China under the *Mei Foo* brand, a phrase that translates to American Trust. Soon thereafter, Standard Oil began marketing operations in the Middle East as well. By the early 1900s, half of Standard Oil sales were outside the U.S.

The company’s influence over the petroleum market—and related activities, like rail transport—was enormous. Ida Tarbell, writing in her groundbreaking work, The History of Standard Oil, characterized the company’s operations this way:

> There is no gaming table in the world where loaded dice are tolerated, no athletic field where men must not start fair. Yet Mr. Rockefeller has systematically played with loaded dice, and it is doubtful if there has ever been a time since 1872 when he has run a race with a competitor and started fair.

Eventually, the courts of the land would agree with Ms. Tarbell’s assessment. Standard Oil exercised too much influence over the petroleum market. This particular trust was busted as an illegal monopoly—disbanded by the 1911 Supreme Court decision, echoing Tarbell’s sentiment in the legalistic parlance of the courts:

> The unification of power and control over a commodity such as petroleum and its products by combining in one corporation the stocks of many other corporations aggregating a vast capital gives rise, of itself, to the prima facie presumption of an intent and purpose to dominate the industry connected with, and gain perpetual control of the movement of, that commodity and its products in the channels of interstate commerce…

Put simply, Standard Oil was a giant, multinational corporation. But is it fair to tag it—as Wikipedia does—as the *first* giant, multinational corporation? Long before Standard Oil came into existence—before the United States itself was formed—numerous companies operated on a global scale, their international reach typically reflected in their names: British East India Company; Dutch East Indies Company; Hudson's Bay Company.

One such multinational, *The Governor and Company of the merchants of Great Britain, trading to the South Seas and other parts of America, and for the encouragement of fishing*, better known to history as the South Sea Company, inspired such reckless investing early in the 18th century that Britain was compelled to pass the Bubble Act of 1720 in an attempt to forestall rampant speculation in other companies. The South Sea Company reminds us of modern scandals like Enron or Bernie Madoff's investment company—mostly smoke and mirrors, with no *there* there.

For the most part, these 16th and 17th century multinational firms had charters from their respective governments that brought each firm into legal existence and allowed for its operation. These were corporate charters. The firms were corporations.

An Early Charter

Early charters were quite explicit in the terms laid out for the corporate entities. This was true for the Dutch East Indies Company, but it is its sister corporation, the Dutch West India Company, that has an especially revealing charter, one that is almost breath-taking in its scope. The corporate charter of the Dutch West India Company, signed on June 3, 1621 was written in a manner that is dense and (in a surprisingly recognizable fashion) highly legalistic, but a few excerpts give the flavor of how tightly woven together were companies and countries in the 17th century.

The charter begins civilly enough:

> The States-General of the United Netherlands, to all who shall see these Presents, or hear them read, Greeting.

It then lays out a noble-sounding mission:

> …with mature deliberation of counsel, and for highly necessary causes, found it good, that the navigation, trade, and commerce, in the parts of the West-Indies, and Africa, and other places hereafter described, should not henceforth be carried on any otherwise than by the common united strength of the merchants and inhabitants of these countries; and for that end there shall be erected one General Company, which we out of special regard to their common well-being, and to keep and preserve the inhabitants of those places in good trade and welfare, will maintain and strengthen with our Help, Favour and assistance as far as the present state and condition of this Country will admit: and moreover furnish them with a proper Charter, and with the following Priveleges and Exemptions

and goes on to detail the exclusive authority of the Dutch West India Company:

> ...for the Term of four and twenty Years, none of the Natives or Inhabitants of these countries shall be permitted to sail to or from the said lands, or to traffic on the coast and countries of Africa from the Tropic of Cancer to the Cape of Good Hope, nor in the countries of America, or the West-Indies...nor in the western or southern countries reaching, lying, and between both the meridians, from the Cape of Good Hope, in the East, to the east end of New Guinea, in the West, inclusive, but in the Name of this United Company of these United Netherlands.

In other words, a large portion of the known world, from Africa to the Americas, was being ceded (as far as the Netherlands were concerned) exclusively to the Dutch West India Company for the next twenty four years. Woe to those who ignore the corporation's chartered rights:

> ...whoever shall presume without the consent of this Company, to sail or to traffic in any of the Places within the aforesaid Limits granted to this Company, he shall forfeit the ships and the goods which shall be found for sale upon the aforesaid coasts and lands; the which being actually seized by the aforesaid Company, shall be by them kept for their own Benefit and Behoof. And in case such ships or goods shall be sold either in other countries or havens they may touch at, the owners and partners must be fined for the value of those ships and goods...

The Dutch West India Company could enforce laws, seize property, and levy fines on merchant sailors. The company's authority is not just ocean-going, however:

"...moreover, the aforesaid Company may..."

> *(bullets added for clarity)*
> - make contracts, engagements and alliances with the princes and natives of the countries comprehended
> - build any forts and fortifications there
> - appoint and discharge Governors, people for war, and officers of justice, and other public officers, for the preservation of the places, keeping good order, police and justice, and in like manner for the promoting of trade
> - advance the peopling of those fruitful and unsettled parts

Nor is the corporation thus chartered left to its own devices:

> ...if it should be necessary for the establishment, security and defence of this trade, to take any troops with them, we will, according to the constitution of this country, and the situation of affairs furnish the said Company with such troops, provided they be paid and supported by the Company....Which troops, besides the oath already taken to us and to his excellency, shall swear to obey the commands of the said Company, and to endeavour to promote their interest to the utmost of their ability.

There is much more in the 55-Article, 5,000 word charter, including exemptions from taxes, rules for sharing the spoils of war, details of company management and organization, requirements for meetings and accounting reports, and even instructions for the appropriate company action if a ship is blown off course. But the main thrust of the document is the creation of a business entity to carry out the expansionist aims of the Dutch government through exploration, conquest, settlement, piracy, and commerce. As was typical of the business charters of the 17th, 18th and well into the 19th centuries, the corporations thus created were granted exclusive monopolies to conduct the business at hand. Corporations—far from fostering competition—were one of the key mechanisms by which monarchs constrained the marketplace and stifled competition because such limitations were seen to be in the nation's best interests.

Corporate Traits

So what makes Standard Oil the first multinational?

A history of the corporation, written in 1917, starts out with a caveat*: "The term 'business corporation' has no precise technical significance."* That's still the case today; the idea of the "business corporation" means different things in different contexts. This is not to say the term is meaningless. But there's enough variability in its use to make it difficult (perhaps impossible) to say, for instance, whether the first true multinational business corporation came into being in 19th century America or 17th century Europe.

An ordinary dictionary definition of 'corporation' seems fairly straightforward. It's generally worded along the lines of: *a corporation is a group of individuals acting as a single entity, and recognized as such under the law*. The definition allows for the wide variety of corporate entities in existence. A corporation comes into being when the collection of individual people goes through the legal process of incorporating as defined in the jurisdiction in which they have filed their corporation documents. The definition is typically silent about the size of the collection. A corporation can be twenty people, or twenty thousand, but no matter the number, the end result is a single, legally-recognized entity. *E pluribus unum*...Out of many, one.

In more common use, though, 'corporation' generally refers not only to a business entity, but to a sizable business operation. In this context, the term takes on some additional detail. Business textbooks typically list five traits of a business corporation, the first being its just-mentioned status as a legal entity. The four additional traits are:

Limited liability: As a legal entity, a corporation is entitled to enter into binding contracts, borrow money, and do other things that business people do. The corporation bears the responsibility for fulfilling these contracts, but individual corporate shareholders do not. They are shielded from most of the financial liability that the corporation assumes. For an unincorporated sole proprietorship, there is no distinction between the business and the business owner—if the business is successfully sued, the owner is fully liable so that even his personal finances and property are at risk. A shareholder in a corporation, on the other hand, is off limits in a lawsuit. His or her potential losses are limited to the value of the shares owned.

Transferable shares: Corporations are divided into shares, each share conferring a small bit of ownership in the corporation. Shares of a corporation are alienable, that is, readily transferable from one person to another. Corporate shareholders can transfer their shares in fairly unrestricted fashion. In some business arrangements, this is not the case. A shareholder in a partnership, for example, may not be permitted to dispose of her shares until the company is dissolved.

Perpetual existence: Corporations are immortal...or at least, they have the potential to be. Since the corporate entity is a "fictional person", its existence is not limited by the finite lifespans of natural persons. Even if the entire board of directors and senior managers of a corporation were to perish in some disaster, the corporate entity still survives. Of course, the potential for perpetual existence is no guarantee of achieving it. Very few corporations manage to survive century after century.

Centralized management: Shareholders of a corporation are, collectively, the owners of the company. But typically, management of a corporation is handed over to a group that is distinct from the bulk of the shareholder community. A board of directors, appointed by the shareholders, sets the strategies and policies for the corporation while the day to day operations are managed by senior corporate executives.

Standard Oil clearly possessed at least three of these five traits. It was a discrete, legally-recognized entity that filed its articles of incorporation in Ohio on January 10, 1870. Limited liability of business corporations was a fairly well-established legal principle in the United States by the late 19th century, so Standard Oil can be said to possess that corporate trait as well. The company's "immortality" was available in principle, even though Standard Oil was ultimately dismantled by the Supreme Court.

Other corporate traits are murkier. Shares in the company were originally held by 37 shareholders, and were eventually combined into a trust that conveyed the shares to John D. Rockefeller and eight other trustees. It's an open question as to how “alienable” these shares were in practice, though there does not seem to have been any actual legal or contractual prohibition on their transferability. So too with separation of management and ownership that is characteristic of modern corporations; shares of

Standard Oil were held by such a small cadre that it's hard to conceive of any shareholders that did not have an active part in the running of the company. (On the other hand, the actual corporate web of Standard Oil's ownership of and holdings in other companies was quite complex, making it difficult to say just how many actual shareholders the company had, or who was running what).

How does Standard Oil stack up against its 17th and 18th-century corporate cousins in Europe? A description from Palgrave's Dictionary of Economics of one such firm, chartered in 1602, provides a useful comparison:

> The Dutch East Indies Company...was formed as a limited time venture. When that limit drew near, the board boldly announced that the corporation would persist indefinitely. The shareholders sued to force a liquidating dividend—and lost! Fortunately, they found they could sell their shares to other investors for the value of a liquidating dividend—or even more. Thus was born the first modern stock market, and the alienability, or unhindered sale, of shares became a defining characteristic of a corporation. Letting shareholders realize their investments by selling their shares, rather than liquidating the business, gave corporations a second defining characteristic: indefinitely long lives...

By one count, then, it's possible to construe the Dutch East Indies Company (not to be confused with the Dutch West India Company, which came a few decades later) as "more" of a corporation than Standard Oil. It was a legal entity chartered by the Dutch government. Shares in the company, originally untransferable, became alienable through the board's actions; the company even established the Amsterdam Stock Exchange, considered the first such corporate shares market in the world. Similarly, the limited 21-year existence envisioned by the original charter was expanded to an indefinite existence, and the firm remained a viable venture for almost 200 years. The description above implies a corporate management separate from the firm's ownership. The status of limited liability is uncertain and, as far as we know, was not tested by the legal system of the time. Thus, the Dutch East Indies possessed four of the five traits in the above list, one more (perhaps) than our count for Standard Oil.

But checking off the corporate traits is probably missing the point. Neither firm really "feels" like a modern corporation. The Dutch East Indies Company, with its aggressive posture of exploration and colonization is more of an invading force on behalf of the Dutch government than an independent business venture. The company essentially waged war, occupied territory, and exercised government-like powers such as coining money, running prisons and carrying out executions. We can reasonably suppose that most readers would agree that Standard Oil, with its focus on domestic petroleum production, is much closer in spirit to a 21st century corporation than the exploratory mission of its 17th century predecessor, but even here, the restricted ownership rights and massive, monopolistic presence distinguish Standard Oil from its modern corporate brethren.

The Dutch East Indies Company and Standard Oil are both corporations, but they are conceptually and operationally quite different from one another and both are quite different from a modern corporation. Most large corporations that do business in the marketplace of modern capitalism have a set of common traits that are not fully captured by the conventional list we laid out above. They do indeed possess the five listed traits—legal entity, limited liability, alienability, potential immortality, and central management—but these alone are not enough to distinguish corporations of centuries past from those of the modern age.

The conventional traits are necessary but not sufficient—necessary for organizations to be described as corporations, but not sufficient to make for a full description. We have identified several additional traits that also belong to corporations. They are useful in distinguishing the modern-day corporation from its historical predecessors.

Non-monopolistic: Corporations from centuries past, such as the Dutch West India Company, operated as monopolies, with sole control of goods being traded and trade routes over which they moved.

In the modern era, corporations are actively discouraged from becoming dominant enough in the marketplace to act as a monopoly. Companies that do reach such size and influence risk being dismantled by government fiat—as happened to Standard Oil in 1911 and AT&T in 1982. There are certainly exceptions to this, such as incorporated utilities or corporations in emerging economies that may be more tolerant of (or even encourage) monopoly status. Aramco, the Saudi Arabian petroleum giant, is certainly a monopolistic corporation within Saudi Arabia even as it competes against other oil companies on the world market. As a general rule, though, modern corporations do not operate as monopolies.

Non-restrictive charter: Corporate charters in the 17th and 18th centuries (and well into the 19th) granted companies significant rights but also imposed substantial restrictions on a company's operations. Charters could be lengthy, legalistic and highly detailed. The 1621 charter for the Dutch West India Company was more than 5,000 words divided into 55 discrete articles that defined what the corporation could and could not do. Activities that extended beyond the charter were legally deemed to be *ultra vires* (beyond the powers) and thereby illegitimate.

The practice of governments of awarding a small number of specifically defined corporate charters eventually gave way to the modern practice of the bureaucratic rubberstamp: fill out some forms, pay a fee, identify an agent and *voila*…you are now a corporation. Modern corporate charters are brief and do not define or restrict the business activities of a company in any meaningful way.

Public reporting: Most, but not all, modern-day business corporations are subject to substantial financial reporting requirements. These reports are available not only to shareholders of the company, but to the public at large, a requirement intended to promote transparency of business operations. This is certainly true for publicly-held companies (those traded on the stock markets). But private firms are also subject to reporting requirements, especially large financial corporations holding investor or customer assets. Even small corporations are subject to some straightforward reporting requirements as they must file a publicly-available list of corporate officers and agents.

Expansive Personhood: For as long as corporations have existed as a legal concept, they have been endowed with legal 'personhood'. However, corporations in the modern era have achieved a considerably more expansive set of rights associated with corporate personhood, as a result of numerous policy decisions and court actions. The 2010 U.S. Supreme Court decision, Citizens United v FEC, held that the federal government had no authority to restrict spending by corporations that were exercising their Constitutionally-protected right of free speech, even in the context of 'hot button' political issues. Citizens United is a non-profit corporation, but the decision extended to business corporations as well.

Although this expanded concept of corporate personhood is perhaps most notable in the United States, it seems to be operable throughout most of the corporate world in the sense that corporate persons are able to speak